

STATE OF ALABAMA



OFFICE OF THE SECRETARY OF STATE

JIM BENNETT
SECRETARY OF STATE

April 16, 2002

P.O. BOX 5616
MONTGOMERY, AL 36103-5616

MEMORANDUM:

TO: Out-of-state Insurance Companies Operating in Alabama

FROM: Chuck Grainger
General Counsel
Alabama Office of the Secretary of State
P.O. Box 5616
Montgomery, AL 36103
cgrainger@mindspring.com

RE: Follow-up to October, 2001 Mailing from our Office.

I am writing to share with you our efforts to clarify or modify Alabama law regarding the possibility of your company seeking a certificate of authority from our Office in addition to that you have already obtained from the Alabama Department of Insurance. I am pleased to report that after obtaining a favorable Attorney General's opinion, our office has entered into a formal agency agreement with the Alabama Department of Insurance which designates that department as our agent for filings by out-of-state insurance companies necessary to comply with the requirements of Alabama's constitutional and corporate law.

Because we are accepting what has been filed in the Department of Insurance as also being a filing with our office, no further action is required on your part. I have enclosed a formal agency agreement between the Alabama Department of Insurance and the Alabama Office of the Secretary of State. Please route this to your attorney or other individual responsible for reviewing this matter.

Previously, I had discovered two facts which led to our former correspondence: (1) sometime between 1974 and 1981, our staff began rejecting filings from foreign insurance companies attempting to obtain a certificate of authority as a foreign corporation in Alabama; and (2) the General Counsel of the Alabama Department of Insurance shared that they were unaware of any legal basis in the Alabama Insurance Code which would prevent a foreign insurance

company from filing in both offices - ours as a foreign corporation and their office as a foreign insurance company. Having rejected these filings for many years, the Secretary of State's office felt we had a moral obligation to contact you with this information and invite you to review your status with your attorney.

Since then our office has worked with representatives within the Alabama Department of Insurance and the insurance industry to identify a legal foundation for not only the informal past practices but also for going forward in a formal arrangement. Despite the absence of a written record or written legal authority, we interpret the past relationship between our office and the Alabama Department of Insurance to be a de facto agency relationship based upon the past practices of both agencies. In other words, both agencies behaved as though such a relationship existed and therefore it existed as a matter of law. The Attorney General opinion permitted us to reach this conclusion.

The agency agreement with the Department of Insurance not only recognizes this historic relationship but memorializes our relationship going forward.

If your company obtained a certificate of authority directly from our office between October, 2001 and March, 2002, those records will be transferred to the Department of Insurance. You were able to benefit from the legal certainty that direct filing offered. Such filings remain valid.

Conclusion:

We appreciate the assistance of so many in laying a legal foundation for a practice of making both types of filings in the Department of Insurance in the absence of written historic records or statutes. This common-sense result is welcomed by all concerned. Again, no further action is required by your company so long as your company's certificate of authority to transact insurance and articles of incorporation are on file with the Department of Insurance.

If you have a legal question concerning this matter, you may contact me by e-mail (preferred) at cgrainger@mindspring.com or by telephone at (334) 242-7202. You may direct administrative questions to either the Alabama Department of Insurance or to Robina Wilson, Director of the Corporations Division, at (334) 242-5324.

**AGENCY AGREEMENT BETWEEN
THE ALABAMA OFFICE OF THE SECRETARY OF STATE
AND
THE ALABAMA DEPARTMENT OF INSURANCE**

This Agreement is entered into this the 16th day of April 2002, by and between the Office of the Secretary of State, hereinafter referred to as "Sec. of State," and the Alabama Department of Insurance, hereinafter referred to as "Insurance Department."

WHEREAS Alabama Constitution Article VII, Section 232, as amended by Amendment 473 (collectively "Amendment 473") provides that no foreign corporation shall transact business in Alabama without filing with the Sec. of State a certified copy of its articles of incorporation;

WHEREAS the Alabama Business Code, Ala. Code § 10-2B-15.01, provides that no foreign corporation may transact business in Alabama until it obtains a certificate of authority from the Sec. of State;

WHEREAS Amendment 473 and Section 10-2B-15.01 describe ministerial acts that the Sec. of State may delegate to its agent under Alabama law;

WHEREAS the Alabama Insurance Code, Ala. Code § 27-3-1 et. seq., provides that no insurance company may transact insurance business in Alabama until granted a certificate of authority by the commissioner of the Insurance Department;

WHEREAS the requirements for obtaining a certificate of authority under the Alabama Insurance Code encompass the requirements for obtaining a certificate of authority under the Alabama Business Code;

WHEREAS in order to promote the efficiency of government, for over nineteen years, the Sec. of State has delegated to the Insurance Department its ministerial duty of filing foreign insurance companies' articles of incorporation pursuant to Amendment 473, and its ministerial duty of issuing insurance companies' certificates of authority under Ala. Code § 10-2B-15.01;

WHEREAS the parties now desire to memorialize in writing this de facto agency relationship;

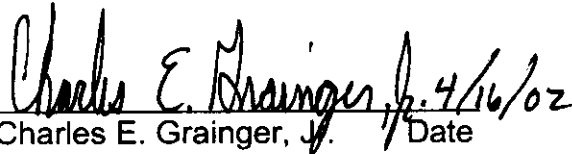
NOW, THEREFORE, the parties agree as follows:

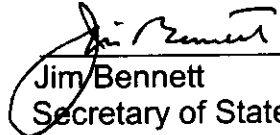
1. Appointment and Authorization of Agent. The Sec. of State appoints the Insurance Department its agent for the purpose of the filing of

and retention of foreign insurance companies' certified articles of incorporation under Amend. 473 and the Alabama Business Code and for the issuance of certificates of authority to foreign insurance companies to transact business in Alabama.


2. Duties and Responsibilities. As agent to the Sec. of State, the Insurance Department shall file and maintain foreign insurance companies' certified articles of incorporation and all amendments thereto; file, rule upon and maintain foreign insurance companies' applications (and all amendments thereto) for certificates of authority to transact business in Alabama in accordance with the Alabama Insurance Code, Ala. Code § 27-3-1 et seq.; and collect the requisite filing fees associated therewith.
3. Filing Fees. After the date of this agreement, foreign insurance companies applying for a certificate of authority to transact business in Alabama as a foreign corporation are obliged to tender a filing fee of \$175 to the Insurance Department on behalf of the Sec. of State pursuant to Ala. Code § 10-2B-1.22 (a) (19). The Insurance Department shall remit 70% of these fees to the Sec. of State on a quarterly basis for deposit into the General Fund in accordance with Ala. Code § 10-2B-1.22 (e). The Insurance Department shall retain the remaining 30% for the expenses of performing this agreement.
4. Duration and Termination.
 - a. This Agreement shall become effective immediately upon execution and shall continue in force for a period of one year, and shall be automatically renewed annually thereafter, unless terminated as provided herein.
 - b. Termination. Either party may terminate this agreement by giving the other party written notice at least 90 days prior to the effective date of termination.
5. Amendments. By mutual consent, this Agreement may be amended in any respect. Said amendment shall be in writing and signed by both parties.
6. Contact Persons.
 - a. The Sec. of State contact person for all matters relating to this Agreement shall be Eleanor Swedenburg.
 - b. The Insurance Department contact person for all matters relating to this Agreement shall be Michael Bownes.

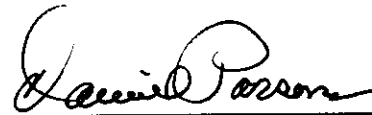
Approved as to Legal Form (Sec. of State)


Charles E. Grainger, Jr. 4/16/02
General Counsel Date

 4/2/02
Jim Bennett Date
Secretary of State

Approved as to Legal Form (Insurance Department)

 3/25/02
Mike Bownes Date
General Counsel


David Parsons Date
Commissioner of Insurance